No. 86-1728

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

LEO CAHOON,
Appellant,

vs.

ALTON PACKAGING CORPORATION,
JEFFERSON SMURFIT CORPORATION, and
JEFFERSON SMURFIT GROUP, LTD.,
Appellees.

On Appeal From The Appellate Court
of Illinois, Fifth District

JURISDICTIONAL STATEMENT

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April 27, 1987

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QUESTION PRESENTED

Whether the Illinois Human Rights Act, *Ill. Rev. Stat.* ch. 68, §8-111(C) (1985), formerly *Ill. Rev. Stat.* ch. 68, §8-111(D) (1983), as enacted or construed, violates the Supremacy Clause of the United States Constitution by prohibiting the filing of claims under the federal Age Discrimination in Employment Act (ADEA) 29 U.S.C. §621, *et seq,* in Illinois courts, unless state administrative remedies have been exhausted, contrary to the express terms of the ADEA.

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On Appeal From The Appellate Court
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JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the Appellate Court of Illinois, Fifth District, attached as Appendix A, is reported at 148 Ill.App.3d 480, 499 N.E.2d 522, 101 Ill.Dec. 934 (5th Dist. 1986), leave to appeal denied (February 6, 1987).

JURISDICTION

Leo Cahoon, Appellant, appeals from the judgment and decision of the Appellate Court of Illinois, Fifth Judicial District, which was entered September 24, 1986. This decision reversed a jury verdict and judgment for Leo Cahoon entered in the trial

court on November 4, 1985, under a claim made pursuant to the federal Age Discrimination in Employment Act of 1967, 29 U.S.C. §621 *et seq.* (1985). A Petition for Rehearing was denied by the Appellate Court on November 7, 1986, and a Petition for Appeal as a Matter of Right, or, Alternatively, for Leave to Appeal to the Illinois Supreme Court was denied by that court on February 6, 1987.

A Notice of Appeal to this Court was filed in the Appellate Court of Illinois, Fifth District, on March 9, 1987, with Proof of Service.

This appeal is being docketed in this Court within 90 days after the denial of the Petition for Appeal as a Matter of Right, or, Alternatively, for Leave to Appeal.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2). 28 U.S.C. §2403(b) may be applicable to this cause.

CONSTITUTIONAL PROVISIONS & STATUTES

Supremacy Clause, United States Constitution, Article VI §2:

> This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Age Discrimination in Employment Act, 29 U.S.C. §626(c)(1) (1985):

> Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter . . . .

Age Discrimination in Employment Act, 29 U.S.C. §633 (1985):

Federal-State Relationship

(a) Federal action superseding state action.

Nothing in this chapter shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under this chapter such action shall supersede any State action.

(b) Limitation of Federal action upon commencement of State proceedings:

In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under §626 of this Title before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated . . . .

Illinois Human Rights Act, *Ill. Rev. Stat.* ch. 68, §8-111(C) (1985), formerly *Ill. Rev. Stat.* ch. 68, §8-111(D) (1983)[1]:

Except as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act.

---

[1] Public Act of Illinois, 84-717, effective Jan. 1, 1986, redesignated former subdivision (D) as (C).

STATEMENT OF THE CASE AND HOW THE FEDERAL AND CONSTITUTIONAL QUESTION WAS RAISED

Plaintiff Leo Cahoon was fired from his employment with defendants as corrugator supervisor on November 30, 1981. He had been employed by defendants for 16 years and was 60 years old when terminated. (R. 138, 150-151).

Plaintiff filed a formal charge of age discrimination with the Illinois Human Rights Commission and the federal Equal Employment Opportunity Commission (EEOC) on February 18, 1982. (R. Appendix A-1). After waiting in excess of the 60 days required by 29 U.S.C. §633(b), on August 11, 1982, plaintiff filed his Complaint alleging age discrimination in violation of the Age Discrimination in Employment Act (hereinafter ADEA) in the Illinois Circuit Court, Third Judicial Circuit, Madison County, Illinois. (C. 2). Defendants did not seek removal of this suit.

On December 14, 1982, defendants filed an Objection to the Jurisdiction of the Illinois Human Rights Commission and a Motion to Stay on the basis that an ADEA action was pending in the Circuit Court, and that pursuant to the ADEA, 29 U.S.C. §633(a), the state administrative proceeding was superseded. (R. Appendix C-3). Plaintiff agreed, and the Illinois Human Rights Commission ordered the administrative proceeding stayed pending the outcome of the state court suit. (R. Appendix C-4).

Thereafter, the ADEA claim went to trial before a jury in the Madison County Circuit Court in February, 1985. At no time in the trial court did defendants object or question subject matter jurisdiction. The jury returned a verdict for plaintiff under the ADEA in the amount of $67,500.00 for past lost wages. (R. 505, C. 183). The trial court awarded an additional $147,310.00 in future wages and benefits, attorneys' fees and costs, pursuant to the parties' stipulation that these elements of damage under the ADEA would be assessed by the court. (C. 267). Defen-

dants filed a timely Notice of Appeal to the Appellate Court of Illinois, Fifth District, and on January 13, 1986 filed their Appellants' Brief.

Defendants raised eight points in their Appellate brief, one being that the Illinois Circuit Court lacked subject matter jurisdiction over ADEA claims on the basis of Section 8-111(C) of the Illinois Human Rights Act, *Ill. Rev. Stat.* ch. 68, §8-111(C) (formerly ch. 68, §8-111(D) (1983)). This was the first time this contention had been made in either the administrative or judicial forum.

The Appellate Court reversed the judgment outright, agreeing that Illinois Circuit Courts did not have subject matter jurisdiction of ADEA claims "unless state administrative remedies have been exhausted" and suggesting that Illinois courts could decline to hear ADEA suits and require that they be processed through the state administrative agency only. *Cahoon v. Alton Packaging Corp.*, 148 Ill.App.3d 480, 499 N.E.2d 522, 101 Ill.Dec. 934 (5th Dist. 1986).

Plaintiff timely filed a Petition for Rehearing asserting the unconstitutionality of the Illinois statute (*Ill. Rev. Stat.* ch. 68, §8-111(C), formerly *Ill. Rev. Stat.* ch. 68, §8-111(D)), and asserting that exhaustion of state administrative remedies, which had not been argued by defendants, was not required. The question of the subject matter jurisdiction of the Illinois Courts for ADEA claims was thus first raised in the Appellate Court briefs of both parties. That the Illinois legislature had no authority to restrict or reject substantive rights created by Congress, as a matter of preemption, was first raised in plaintiff's Appellate Court brief. The specific assertion that ch. 68 §8-111(D), as enacted or as construed, violated the Supremacy Clause, was first specifically stated in plaintiff's Petition for Rehearing after the Appellate Court ruled that this statute required a plaintiff to follow the state administrative framework, an argument not advanced by defendants in their brief and therefore not addressed by plaintiff in response.

Plaintiff's Petition for Rehearing was denied by the Appellate Court, and subsequently plaintiff's Petition for Appeal as a Matter of Right, or, Alternatively for Leave to Appeal was denied by the Illinois Supreme Court.

THE QUESTION IS SUBSTANTIAL

As a result of the decision appealed from, Illinois now prohibits access to its courts by ADEA claimants until state administrative remedies are exhausted, contrary to the express language of the federal statute and contrary to established federal law. This state-imposed requirement violates the doctrine of preemption under the Supremacy Clause of the United States Constitution (U.S. Const., Art. VI §2). The result is to impose burdens upon an ADEA plaintiff in Illinois that exist in no other state, and to undermine the very efficacy that the ADEA intended to promote by explicitly addressing this question and eliminating any exhaustion of remedies requirement.

The decision by the Illinois Appellate Court has overturned the well recognized and accepted procedures for handling ADEA claims, at least in the State of Illinois. It is submitted that if this decision is not reviewed, other states will undoubtedly adopt its rationale. Ultimately, Illinois, and other states, will presumably apply its rationale to other civil rights suits, *e.g.*, 42 U.S.C. §1983, if for no other reason than to alleviate their allegedly congested dockets. Plaintiff will demonstrate that (1) Illinois courts have concurrent jurisdiction of ADEA claims; (2) exhaustion of state administrative remedies is not required; (3) a requirement of exhaustion of remedies violates the Supremacy Clause of the U.S. Constitution; (4) mandatory use of the Illinois administrative forum provided denies substantial rights; and (5) reversal is required not only to correct the error as to this plaintiff, but also for other ADEA plaintiffs whose claims have been or may be essentially extinguished in Illinois by this decision.

Plaintiff's cause of action was based on the federal Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §621 *et seq.* It is evident from the statutory language, legislative history and case law that the United States Congress determined that state and federal courts would have concurrent jurisdic-

tion, which grants plaintiff his choice of forum in either a state or federal court. 29 U.S.C. §626(c)(1) states:

> Any person aggrieved may bring a civil action in *any court of competent jurisdiction* for such legal or equitable relief as will effectuate the purposes of this chapter . . . . (emphasis added).

In *Jacobi v. High Point Label, Inc.*, 442 F.Supp. 518 (M.D.N.C. 1977), the court pointed out:

> Clearly, Congress intended for a person aggrieved by a violation of the Age Discrimination Act to have the right to bring his action in state court. 442 F.Supp. at 521.

The legislative history also states that the ADEA provides for concurrent jurisdiction. 1967 *U.S. Cong. & Ad. News* (90th Cong.) 2213 at 2218. *Eagleburger v. City of Springfield,* 677 S.W.2d 914, 915 (Mo. Ct.App. 1984) reached the same result and held that Missouri trial courts had subject matter jurisdiction of an ADEA claim. *See also, Baldwin v. Sears Roebuck & Co.*, 667 F.2d 458, 461 (5th Cir. 1982). No cases have held to the contrary.

Illinois circuit courts are courts of competent and general jurisdiction. Ill. Const. Art. VI §7 (1970), provides:

> Circuit courts shall have original jurisdiction of all justiciable matters . . . .

The Illinois legislature may not deprive Illinois circuit courts of their original jurisdiction, nor can their jurisdiction be changed or abridged by an act of the legislature. *Ruth v. Aurora Sanitary District,* 17 Ill.2d 11, 158 N.E.2d 601, 605 (1959), and *Skilling v. Skilling,* 104 Ill.App.3d 213, 432 N.E.2d 881, 886 (1st Dist. 1982).

The conclusion of the Illinois Appellate Court that an Illinois court must dismiss an ADEA case "unless state administrative

remedies have been exhausted", 499 N.E.2d 523, 524, directly contradicts the ADEA itself and decisions of this Court. 29 U.S.C. §633, entitled *Federal-State Relationship,* provides:

> (a) Federal action superseding State action.
>
> Nothing in this chapter shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age *except that upon commencement of action under this chapter such action shall supersede any State action.* (emphasis added).

It further provides:

> (b) Limitation of Federal action upon commencement of State proceedings.
>
> In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, *no suit may be brought under §626 of this Title before the expiration of 60 days after proceedings have been commenced under the State law,* unless such proceedings have been earlier terminated . . . . (emphasis added).

In *Oscar Mayer and Company v. Evans,* 441 U.S. 750, 99 S.Ct. 2066, 60 L.Ed. 2d 609 (1979), this Court specifically addressed and rejected the assertion that exhaustion of state administrative remedies was required. This Court held that §633(b) was intended to give state agencies only a *limited opportunity* to resolve problems of employment discrimination and to screen those cases capable of early resolution. 441 U.S. at 755. This Court concluded that besides *commencement* of state administrative proceedings more than 60 days prior to filing a complaint, *no other obligations* were placed on ADEA claimants. 441 U.S. at 759. In this case, plaintiff followed this

directive by waiting 173 days after commencing his state administrative proceeding before filing his civil suit. There is no question that plaintiff has complied with all ADEA statutory requirements, and had his suit been filed in federal court, it would be "on all fours" with the holding in *Oscar Mayer & Company v. Evans,* 441 U.S. 750, 99 S.Ct. 2066, 60 L.Ed. 2d 609 (1979).

Testa v. Katt, 330 U.S. 386, 67 S.Ct. 810, 91 L.Ed. 967 (1947) held that states are not free to refuse enforcement of a valid federal statute. At issue in *Testa* was a claim under the federal Emergency Price Control Act which gave jurisdiction to "any court of competent jurisdiction", just as the ADEA does. The Rhode Island Supreme Court ruled that Rhode Island courts could decline to hear such a suit which it said was based on a foreign penal statute. The United States Supreme Court reversed and held that Rhode Island could not decline or refuse to hear such a suit.

According to *Testa,* earlier Supreme Court cases had repudiated the assumption that federal laws can be considered by the states as emanating from a foreign sovereign and held that when Congress speaks through legislation, such legislation becomes the policy of every state and "should be respected accordingly in the courts of the States." 330 U.S. at 391, 392. *Testa* held that the state court had "jurisdiction adequate and appropriate under established local law to adjudicate this action." 330 U.S. at 394.

That the obligation of states to enforce federal laws rests squarely in the Supremacy Clause was verified in *Federal Energy Regulatory Com'n v. Mississippi,* 456 U.S. 742, 102 S.Ct. 2126, 72 L.Ed. 2d 532 (1982). This case also rejected the notion that states entertain federal actions solely as a discretionary matter of comity. 456 U.S. at 763 n.28. *See also, Second Employers' Liability Cases (Mondou v. New York, N.H. & H.R. Co.),* 223 U.S. 1, 32 S.Ct. 169, 56 L.Ed. 327 (1912), and *Claflin v. Houseman,* 93 U.S. 130, 23 L.Ed. 833 (1876).

Interestingly, the Illinois Supreme Court in *Regan v. Kroger Grocery & Baking Co.*, 386 Ill. 284, 54 N.E.2d 210 (1944), decided the precise issue presented in *Testa* three years earlier. The Illinois Supreme Court ruled the same way as *Testa* was decided, and recognized that because the laws of the United States were the laws of the State of Illinois, plaintiff was entitled to his choice of forum:

> It follows that when Congress grants a right and makes no provision with reference to the courts in which the right may be enforced, a suit to enforce such right may be brought in any State or Federal court having general jurisdiction of the class of cases to which the particular action belongs. When the Congress creates a right and provides that the State and Federal Courts shall have concurrent jurisdiction of suits to enforce it, such grant of concurrent jurisdiction implies that the plaintiff, in the first instance, shall have the choice of the court in which to bring the action. He is entitled to whatever remedial advantages inhere in the particular forum.
>
> The result is that whether the act be regarded as penal or remedial, makes no difference in this case. It is not a law of foreign sovereignty. The Emergency Price Control Act is a law of Illinois and enforceable as such. The courts of Illinois have not been denied jurisdiction by the act. Such jurisdiction has been expressly granted to them, concurrent with the Federal courts. 54 N.E.2d at 218.

The argument advanced by defendants that federal statutes take state courts "as it finds them" is correct as far as it goes. However, this doctrine does not mean that ADEA claims should or can be pursued through a state's *administrative* forum only. This doctrine means that conditions imposed by the state court must be conditions for every other litigant who seeks access to its courts. *Brown v. Gerdes,* 321 U.S. 178, 190, 64 S.Ct. 487, 493, 88 L.Ed. 659 (1944). The requirement that conditions

must be applied across the board, regardless of the basis of the claim, also is present in the so-called "valid excuse" cases. C. Wright, *The Law of Federal Courts,* §45 at 269 (4th ed. 1983). This Court has asserted federal control over incidents of state trial practice in Federal Employers' Liability Act (FELA) cases that might appear to be procedural, and has done so out of concern, apparently, for protecting the rights of FELA plaintiffs. *Norfolk & W. Ry. Co. v. Liepelt,* 444 U.S. 490, 503, 100 S.Ct. 755, 762, 62 L.Ed. 2d 689 (1980). It should do no less for ADEA plaintiffs. Further, the filing and deferral provisions of the ADEA have been held sustantive and not procedural. *Whitfield v. City of Knoxville,* 756 F.2d 455 (6th Cir. 1985).

There is reason to question whether the Illinois Appellate Court correctly construed the state statute in question. It appears that the legislature recognized the requirements of the ADEA (and other laws) in the statute itself by the provision "Except as otherwise provided by law...". Second, as discussed *supra,* since the Illinois legislature may not deprive, change or abridge the original jurisdiction of the circuit courts, which is established by the Illinois Constitution, it is unlikely that the legislature intended the construction given the Illinois statute by the Appellate Court. Whether or not the Appellate Court's construction of the state statute is correct, that construction creates a substantial deprivation of federal rights.

Most significant is the right to a jury trial. Claims under the Illinois Human Rights Act are heard by an administrative law judge whose decision is subject to review only pursuant to the Administrative Review Act. Venue for judicial review is directly to the Appellate Court, which determines if factual findings are contrary to the manifest weight of the evidence. *Ill. Rev. Stat.* ch. 68, §8-111 (A)(2) & (A)(3). The doctrine of *res judicata* bars later judicial action where such claims have been administratively litigated and judicially reviewed. *Kremer v. Chemical Construction Co.,* 456 U.S. 742, 102 S.Ct. 1883, 72 L.Ed.2d 689 (1980). On the other hand, a jury trial is a matter of right in

ADEA cases. 29 U.S.C. §626 (c)(2). However, a plaintiff in Illinois must exhaust his administrative remedies before filing his ADEA claim. When he thereafter files his ADEA claim, it will be decided on the results of the state administrative proceedings under the principles of preclusion and *res judicata,* and he is effectively denied his right to a jury trial.

A second deprivation to plaintiff is his choice of forum. The ADEA grants plaintiff his choice of a federal or state forum both at the administrative and judicial stages. The Illinois statute, as construed, defeats absolutely his right to choose the state judicial forum notwithstanding the ADEA's directive that he can file in any *court* of competent jurisdiction.

In addition, there is no known authority under the Illinois Human Rights Act for the imposition of either liquidated (punitive) or future damages, as opposed to the remedy of reinstatement. *Ill. Rev. Stat.* ch. 68, §8-108. Therefore, the remedies provided by the HRA may not be as complete as under the ADEA which authorizes liquidated damages and future damages in appropriate cases. Future damages are part of the award won by the plaintiff in this case.

Also, the statute of limitations under the ADEA, which is two years, is not tolled by the filing of a claim with a state administrative agency; in fact, this statute of limitations is only tolled for a period of one year to the extent that the *federal* EEOC is attempting to effect voluntary compliance. 29 U.S.C. §626(e)(1) and (2). Accordingly, a plaintiff who is required to institute and pursue procedures pursuant to the Human Rights Act to the conclusion, including administrative review, would be barred by the statute of limitations when he filed his ADEA claim at the conclusion, as the Court's opinion suggests he must. The Illinois HRA contains no time limits within which the administrative proceeding must be completed.

Plaintiff's claim, first formally asserted in February, 1982, is now over 5 years old. The need for expeditious processing of

ADEA claims, strongly noted in the *Oscar Mayer v. Evans* decision, has been frustrated. This question needs resolution to avoid repetition of this onerous procedure in other cases and to allow this plaintiff vindication of his claim.

CONCLUSION

For the reasons set forth, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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April 27, 1987

APPENDIX

APPENDIX A

Leo Cahoon,
Plaintiff-Appellee,

v.

Alton Packaging Corporation; Jefferson Smurfit Corporation; and Jefferson Smurfit Group, Ltd.,
Defendants-Appellants.

No. 5-85-0770

Appellate Court of Illinois,
Fifth District

Sept. 24, 1986

Rehearing Denied Nov. 7, 1986

Al J. Pranaitis, Hoagland, Maucker, Bernard & Almeter, Alton, for defendants-appellants.

Freeark, Harvey & Mendillo, Belleville, and Callis & Hartman, Granite City, for plaintiff-appellee; James R. Mendillo and Michael J. Meehan, of counsel.

Justice WELCH delivered the opinion of the court:

Plaintiff Leo Cahoon brought this action for damages against his ex-employer, Alton Packaging Corporation, for damages and reinstatement under the Age Discrimination in Employment Act ("ADEA") (29 U.S.C. §621 *et seq.*), and for breach of an oral contract of employment. Plaintiff sought relief against defendants Jefferson Smurfit Corporation and Jefferson Smurfit Group, Ltd., on the basis that Alton Packaging was the agent or instrumentality of the other two defendants. After a trial, a Madison County jury found for defendants on the count alleging an oral contract, and for plaintiff on the ADEA counts. The circuit court entered judgment for defendants on

the contract claim, and denied reinstatement and entered judgment in excess of $214,800 plus costs against all three defendants on the ADEA counts. Defendants appeal. There is no cross-appeal.

Of defendants' numerous contentions on appeal, we consider only defendants' contention that the circuit court was without subject matter jurisdiction in this case. Jurisdiction is of two types, jurisdiction of subject matter and jurisdiction of the person. Defects in jurisdiction of the person may be waived. Absent subject matter jurisdiction, the court is without authority to consider or act on a case before it other than to dismiss it. Lack of jurisdiction over the subject matter cannot be waived, nor may a party be deemed estopped to raise the issue. *Volkmar v. State Farm Mut. Auto. Ins. Co.* (1982), 104 Ill.App.3d 149, 151, 60 Ill.Dec. 250, 252, 432 N.E.2d 1149, 1151.

Section 8-111(C) of the Illinois Human Rights Act ("HRA") states: "Except as otherwise provided by law, no court of this state shall have jurisdiction over the subject of an alleged civil rights violation other than as set forth in this Act." (Ill.Rev.Stat.1985, ch. 68, par. 8-111(C).) Article 8 of the HRA (Ill.Rev.Stat.1985, ch. 68, par. 8-101 *et seq.*) provides for hearings on human rights complaints by the Illinois Human Rights Commission, and further provides for review of decisions of that Commission in accordance with the provisions of the Administrative Review Law (Ill.Rev.Stat.1985, ch. 110, par. 3-101 *et seq.*). (Ill.Rev.Stat.1985, ch. 68, par. 8-111(A).) These provisions require an HRA claimant, including an age discrimination claimant, to exhaust administrative remedies prior to bringing an action in the Illinois courts. See *Mein v. Masonite Corp.* (1984), 124 Ill.App.3d 617, 619, 80 Ill.Dec. 154, 156, 464 N.E.2d 1137, 1139, *aff'd* (1985), 109 Ill.2d 1, 92 Ill.Dec. 501, 485 N.E.2d 312. In our view the plain language of Section 8-111(C) requires that an Illinois court dismiss an ADEA case unless state administrative remedies have been exhausted.

Plaintiff does not contend that our legislature intended otherwise. Rather, plaintiff maintains the intent of the legislature does not control the jurisdiction of the court in this situation. Plaintiff's complaint alleged a violation of the ADEA which provides in part: "Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act * * *." (29 U.S.C. §626(c)(1) does not purport to confer jurisdiction. (See generally 20 Am.Jur.2d *Courts* §§ 91, 93 (1965).) None of the cases cited by plaintiff supports the conclusion that a civil rights claimant may ignore the administrative framework provided by our legislature.

Like the HRA, the ADEA provides administrative procedures and remedies. Under the ADEA no civil action may be commenced by an individual until 60 days after a charge alleging unlawful discrimination has been filed with the Secretary of Labor, whose duty is to notify named prospective defendants and seek to eliminate any alleged unlawful practice "by informal methods of conciliation, conference, and persuasion." (29 U.S.C. § 626(d).) Apparently in the instant case the Secretary was duly notified. We do not view that act as conferring jurisdiction on the circuit court in light of our legislature's mandate to the contrary. See *People v. Lang,* (1978), 62 Ill.App.3d 688, 704, 19 Ill.Dec. 231, 244, 378 N.E.2d 1106, 1119, *aff'd in part, rev'd in part* (1979), 76 Ill.2d 311, 29 Ill.Dec. 87, 391 N.E.2d 350, *cert. denied* (1979), 444 U.S. 954, 100 S.Ct. 433, 62 L.Ed.2d 326, *cert. denied* (1980), 444 U.S. 1045, 100 S.Ct. 733, 62 L.Ed.2d 731.

Plaintiff argues the Illinois courts are not free to "discriminate" against federal claims. We only decide here that the federal civil rights claim must be prosecuted under the same procedure applicable to a state civil rights claim. Discrimination against the federal claim is not in question here. Rather, we find in section 8-111(C) of the HRA our legislature's plain directive that a civil rights claim be prosecuted in the administrative

forum before it reaches the court, and that a complaint which invokes a federal claim is not entitled to preferential treatment in that regard. Messrs. Wright and Miller, relied upon by plaintiff, write:

> "For present purposes, it is enough to note that state courts may not arbitrarily deny enforcement to federal statutory claims similar to state law claims that lie within their ordinary jurisdiction. If proper procedure is followed in presenting the claim, state law is not independent to apply a principle of nonenforcement.
>
> * * * * * *
>
> Whatever may be the extent of the obligation imposed on state courts to remedy federal wrongs, much room is left to control the form of the remedy and to impose reasonable limits on its availability. The *Ward* decision [*Ward v. Board of County Comm'rs.* (1920), 253 U.S. 17, 64 L.Ed. 751, 40 S.Ct. 419] expressly left open the possibility that the claim might be denied under the state statute of limitations. In *McCoy v. Shaw* [(1928), 277 U.S. 302, 72 L.Ed. 891, 48 S.Ct. 519], a similar case, the Court affirmed denial of anticipatory equitable relief on the ground that the state could properly require relief to be sought by payment of the taxes and suit for recovery. The same principle appears in other contexts as well.
>
> * * * * * *
>
> Whatever the extent to which state courts are obliged to provide some remedy for federal claims, then, it rests on principles of the nonindependence of state law. Once an effective remedy is made reasonably available, state procedural limitations remain generally independent of federal law, and need survive only the basic tests of adequacy." 16 Wright & Miller [Cooper & Gressman], Federal Practice & Procedure §4024 (1977).

Finally, we find *Parks v. Illinois Dep't of Mental Health* (1982), 110 Ill.App.3d 184, 65 Ill.Dec. 695, 441 N.E.2d 1209, inapposite. Section 626(c)(1) of the ADEA does not appear to support a preemption argument, there being no actual conflict between section 626(c)(1) and the HRA. In any event, plaintiff does not expressly argue preemption in his brief.

For the foregoing reasons, the judgment of the circuit court of Madison County insofar as it pertains to plaintiff's age discrimination claims is vacated, and to that extent the cause is dismissed. The judgment insofar as it denies plaintiff's contractual claim is affirmed.

VACATED AND DISMISSED IN PART; AFFIRMED IN PART.

JONES and KARNS, JJ., concur.

APPENDIX B

No. 5-85-0770

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

Leo Cahoon,
Plaintiff-Appellee,

vs.

Alton Packaging Corporation, et al.,
Defendants-Appellants.

Appeal from the Circuit Court of Madison County

No. 82-L-627

Honorable Horace L. Calvo, Judge Presiding.

ORDER

(Filed November 7, 1986)

This cause having been considered on appellee's petition for leave to appeal and motion for leave to supplement the record pursuant to Supreme Court Rule 329 (103 Ill. 2d R. 329) and/or to amend the pleadings pursuant to Supreme Court Rule 362 (103 Ill. 2d R. 362) and the court being fully advised in the premises:

IT IS THEREFORE ORDERED that appellee's motion for leave to supplement the record and/or to amend pleadings shall be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that appellee's petition for rehearing shall be, and the same hereby is, DENIED.

APPENDIX C

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
Supreme Court Building
Springfield, Ill. 62706

February 6, 1987

Mr. James R. Mendillo
Freeark, Harvey & Mendillo
P.O. Box 423
Belleville, IL 62222

No. 64508 - Leo Cahoon, petitioner, v. Alton Packaging Corporation, et al., respondents. Leave to appeal, Appellate Court, Fifth District.

The Supreme Court today DENIED the petition to appeal as a matter of right or leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on March 2, 1987.

APPENDIX D

IN THE APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

No. 5-85-0770

Leo Cahoon,
Plaintiff-Appellant,

v.

Alton Packaging Corporation; Jefferson Smurfit Corporation, and Jefferson Smurfit Group, Ltd.,
Defendants-Appellees.

Madison County No. 82-L-627

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

(Filed March 9, 1987)

Notice is hereby given that plaintiff-appellant Leo Cahoon hereby appeals to the Supreme Court of the United States from the judgment of the Appellate Court of Illinois, Fifth District, which judgment was entered September 24, 1986, and reversed the judgment entered for plaintiff-appellant Leo Cahoon by the Circuit Court of Madison County, Illinois, on or about November 4, 1985. A Petition for Appeal as a Matter of Right, or, Alternatively, for Leave to Appeal to the Illinois Supreme Court was denied on February 6, 1987.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

FREEARK, HARVEY, MENDILLO
& DENNIS

By JAMES R. MENDILLO
115 West Washington Street
Post Office Box 423
Belleville, Illinois 62222
(618) 233-2686

Attorneys for Plaintiff-Appellant
Leo Cahoon

AFFIDAVIT OF SERVICE

STATE OF ILLINOIS }
COUNTY OF ST. CLAIR }

The undersigned attorney does hereby certify and state that he has caused a true copy of the foregoing document, a Notice of Appeal, to be served upon Mr. Al J. Pranaitis, Hoagland, Maucker, Bernard & Almeter, 401 Alton St., P.O. Box 130, Alton, Illinois, 62002, attorney for defendants, and upon Pratt & Callis, 1326 Niedringhaus Ave., P.O. Box 1326, Granite City, Illinois, 62040, co-counsel for plaintiff-appellant, by causing the same to be placed in a sealed envelope, clearly addressed as aforesaid, with postage fully prepaid, and by depositing said envelopes in a United States Post Office mailbox in Belleville, Illinois, on the 6th day of March, 1987, at approximately 3:00 p.m. o'clock.

/s/ James R. Mendillo

James R. Mendillo, being duly sworn, deposes and states that the matters contained in the foregoing Affidavit of Service are true.

/s/ James R. Mendillo

Subscribed and sworn to before me this 6th day of March, 1987.

/s/ Sara Jane Tipton
Notary Public